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Ravalli County Commissioners

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OG-07-02-149

Date: February 7, 2007

To: Ravalli County Board of County Commissioners *KRH*

From: Karen Hughes, Ravalli County Planning Director

Re: Senate Bill 201

Below I have outlined some considerations regarding SB 201 and the proposed amendments. In particular, please note my department's comments regarding Sections 3, 4 and 7.

Section 1 – The new amendments suggest this entire proposal is to be removed. Originally it required compliance of state transportation projects with a growth policy if it included an infrastructure plan. (Infrastructure plan requirements are discussed in more detail below.)

Section 2 – This section includes two new definitions: "land use management techniques and incentives" and "market incentives". Given the other amendments proposed, it no longer appears the term "market incentives" is utilized and therefore it could be deleted unless it is further clarifying the term, "land use management techniques and incentives."

Section 3 – The original proposal included amendments to the requirements to be included in a growth policy for a jurisdiction. It appears that the amendments to the required provisions have been deleted, which is supportable because it would require immediate updates to an existing growth policy to make it compliant with the new requirements. Current revisions focus amendments on the discretionary items that MAY be included within a growth policy, and these revisions include the following:

1. Deletion of provisions in 76-1-601(4)(c)-(f) related to various evaluations regarding the primary subdivision review criteria [76-3-608(3)(a), MCA]. These provisions have always been a little difficult to understand how to include within a growth policy and the proposed amendment appears supportable.
2. Addition of an infrastructure plan as a potential element to be included within the growth policy and what constitutes an infrastructure plan. Carefully examine this section of the bill. The provisions required to be included in an infrastructure plan appear to be quite extensive and will require a fairly sophisticated level of analysis. Although it may be a useful planning tool to have, it is hard to imagine very many counties taking advantage of this option unless they are already involved in capital improvements planning. Even then the drawbacks may outweigh the benefits. Also, there appears to be a great deal of faith

in this proposal that counties and cities can and will work together on these projects, which might be the appropriate, proper and rational approach, but in reality it is sometimes not very practical. Please note that subsection (4) requires:

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection,;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards; and

(F) natural resources, including but not limited to forest lands, mineral resources, streams, rivers, lakes, wetlands, and ground water;

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

It is hard to imagine how this analysis will be accomplished in the practical planning world and how it will adequately achieve the intended goal for doing this analysis. Will doing this type of analysis at the macro level ensure that potential impacts are adequately mitigated at the level of the individual development proposal?

One other general consideration: Are there other provisions in state law related to capital improvements planning or other infrastructure planning for local government and if so, are there any issues (overlap, conflicts, need for consistency, etc.) between this provision in the growth policy section and those provisions? Presumably any capital improvements and infrastructure planning activities should be coordinated.

Section 4 – This provision allows for local governments to collect fees for subdivision review to support planning that fulfills the purposes of Title 76, Chapter 1 (see below), if their growth policy includes the infrastructure plan or the governing body passes a resolution committing to adopting this plan. Based on our recent subdivision workload, Ravalli County would have received approximately \$32,000 in 2004, \$49,000 in 2005 and \$103,000 in 2006, which are relatively significant amounts of additional funding for our County. It is nice to see an option for obtaining additional funding to support long range planning, but it is not clear whether the effort to complete the infrastructure plan would be worth it. That would likely take further analysis by this County. (Please refer to Sections 4 and 7 for additional details.) Certainly, a significant portion of the money raised through these fees would have been devoted to paying for consulting assistance to complete the infrastructure plan and then more would be allocated to the additional costs of the planning work needed to implement it.

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76-3-102. Statement of purpose. It is the purpose of this chapter to:

- (1) promote the public health, safety, and general welfare by regulating the subdivision of land;
- (2) prevent overcrowding of land;
- (3) lessen congestion in the streets and highways;
- (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
- (5) require development in harmony with the natural environment;
- (6) promote preservation of open space;
- (7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;
- (8) protect the rights of property owners; and
- (9) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

Section 5 – This proposal has been removed with this set of amendments. Originally it allowed for 50% of the affected real property owners instead of 60% of the affected freeholders to petition to create a planning and zoning district (or voluntary zoning district in Ravalli County) if there was an infrastructure plan in place as provided for in the growth policy section. This might have served as a disincentive to complete infrastructure planning.

Section 6 – This proposal has been removed with this set of amendments. Originally it allowed for a higher protest requirement in those cases where the county had adopted an infrastructure plan in accordance with the provisions in the growth policy section. Again, this might have served as a disincentive to complete infrastructure planning.

Section 7 – This proposal appears to be unchanged with the proposed amendments. It allows for a subdivision to be exempt from review, including review against the requirements in the adopted subdivision regulations in a county, under the following circumstances:

- The subdivision is within an area covered by a growth policy that includes an infrastructure plan (Note: There is nothing to say how well a local community has to meet the infrastructure planning requirements and no requirement that the planned infrastructure be completed.);
- County or municipal zoning has been adopted that “avoids, significantly reduces or mitigates adverse impacts” identified in the growth policy that includes the infrastructure plan (Note: It is unclear whether the review of potential impacts at the macro level will correlate to adequate mitigation of impacts at the project level. Also, there appears to be the potential that this criterion could encourage spot zoning proposals.); and
- The subdivision provides for utility easements and legal and physical access.

This county is interested in thoughtful measures that both encourage sound planning practices that achieve community goals and provides some incentive for doing this type of planning. However, there are some concerns that this proposal will subvert the review process, which is intended to ensure that necessary infrastructure has been provided and that impacts have been mitigated for each subdivision proposal.

Section 8 – One minor change. No comment.

Section 9 – This proposal has been removed with the proposed amendments. It appears the original proposal was to remove the potential for local government to exempt subdivisions from review under the primary subdivision review criteria in 76-3-608(3)(a) in cases where the governing body has adopted zoning based on an analysis of the impacts on these same review criteria. With removal of this proposal local governments will have both the subdivision exemption option noted above and this exemption from review against the review criteria.

Section 10 – This proposal has been removed with the proposed amendments. It appears that it originally established that the Department of Natural Resources and Conservation was to give higher priority to water and wastewater treatment system applications for renewable resource grants and loans in those jurisdictions that were proposing new system and that had adopted a growth policy that includes an infrastructure plan.

Section 11 - This proposal has been removed with the proposed amendments. It appears the original proposal was for Treasure State Endowment applicants to receive higher priority from the Department of Commerce if the jurisdiction had adopted a growth policy with an infrastructure plan.

Effective date: Upon passage and approval.

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